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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.W., a Person Coming Under
the Juvenile Court Law.

B275252
(Los Angeles County
Super. Ct. No. TJ22085)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.W.,

Defendant and Appellant.

Appeal from an order of the Juvenile Court of the County of Los Angeles, Gibson W. Lee, Judge. Affirmed and remanded with instructions.

Torres & Torres, Steven A. Torres for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and Rene Judkiewicz, Deputy Attorney General, for Plaintiff and Respondent.

The juvenile court found true the allegations that minor and appellant A.W. possessed a firearm and live ammunition. On appeal, A.W. contends the juvenile court erred when it failed to specify in the disposition minute order his maximum term of confinement. He further contends the disposition minute order stating the terms of his probation does not accurately reflect the terms orally pronounced by the juvenile court and must be corrected.

The Attorney General agrees the juvenile court was required to specify in the disposition minute order a maximum term of confinement. But the Attorney General argues the order contains the substantive terms of A.W.'s probation, and therefore it need not be corrected.

We agree the juvenile court should specify in the disposition minute order a maximum term of confinement, and the discrepancies between the probation terms orally pronounced and those stated in the disposition minute order should be corrected. We therefore remand the matter to the juvenile court to specify the maximum term of confinement and to correct the discrepancies between the oral pronouncement of probation terms and the minute order.

PROCEDURAL BACKGROUND

In a petition filed pursuant to Welfare and Institutions Code section 602,¹ the Los Angeles County District Attorney alleged in count 1 that A.W. committed possession of a firearm by a minor in violation of Penal Code section 29610 and in count 2 that A.W. committed possession of live ammunition by a minor in violation of section 29650. Following an adjudication hearing, the juvenile court sustained the petition. At the disposition hearing, the juvenile court ordered that A.W. was to remain a ward of the court, terminated the previous home of parent order, removed custody of A.W. from his parents, ordered him suitably placed, and placed him on probation pursuant to certain terms and conditions. The juvenile court also awarded A.W. 57 days of predisposition credit.

DISCUSSION

A. Maximum Term of Confinement

The parties agree that the juvenile court was required to specify in its disposition minute order A.W.'s maximum term of confinement. Based on the authorities discussed below, we agree with the parties.

“Whenever a ward is removed from the custody of his or her parent or guardian, ‘the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

continued the minor under the jurisdiction of the juvenile court.’ (§ 726, subd. (d).) A ward . . . may not be held in excess of the maximum term of confinement described in section 726, and, additionally, the juvenile court may specify a lesser period of confinement ‘based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court.’ (§ 731, subd. (c); see *Julian R.* [(2009)] 47 Cal.4th [487,] 498.)” (*In re Edward C.* (2014) 223 Cal.App.4th 813, 825-826.) “As used in this section and in Section 731, ‘maximum term of imprisonment’ means the longest of the three time periods set forth in paragraph (3) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.” (§ 726, subd. (d)(2).)

Because the disposition minute order does not specify a maximum term of confinement, we must remand the matter to the juvenile court with instructions to modify the order by specifying therein a maximum term of confinement.

B. Oral Pronouncement of Probation Terms

At the disposition hearing, the juvenile court continued in place the terms of a previous probation order and orally pronounced two additional probation terms. The juvenile court stated, “No. 13B, you must not knowingly participate in any type of criminal street gan[g] or illegal tagging activity. You must not knowingly associate with members of illegal tagging crews or

criminal street gangs.” The juvenile court also stated, “No. 15A, specifically no contact with Hoover Criminals.”

On the disposition minute order, however, numbers 1, 7, 13B, and 13C were marked, and number 15A was left blank. Number 1—continuing previous probation terms—and number 13B—prohibitng A.W. from knowingly associating with or participating in criminal street gangs and tagging crews—were consistent with the juvenile court’s oral pronouncement. But number 7—prohibiting A.W. from leaving camp or placement without permission—and number 13C—prohibiting A.W. from “knowingly” associating or communicating with “Hoover Criminals”—were inconsistent with the oral pronouncement of the probation terms.

It is well established that the oral pronouncement of judgment controls over the minute order or abstract of judgment memorializing the orally pronounced judgment. “‘Rendition of judgment is an oral pronouncement.’ Entering the judgment in the minutes being a clerical function (Pen. Code, § 1207), a discrepancy between the judgment as orally pronounced and as entered in the minutes is presumably the result of clerical error. Nor is the abstract of judgment controlling. ‘The abstract of judgment is not the judgment of conviction. By its very nature, definition and terms (see Pen. Code, § 1213.5) it cannot add to or modify the judgment which it purports to digest or summarize.’ (People v. Hartsell (1973) 34 Cal.App.3d 8, 14 [109 Cal.Rptr. 27].)” (People v. Mesa (1975) 14 Cal.3d 466, 471.)

Here, there appears to be a discrepancy between the oral pronouncement of the probation terms and the terms stated in the disposition minute order. The matter must therefore be remanded to the juvenile court with instructions to clarify the

discrepancy by further oral pronouncement and modify the minute order to accurately reflect that clarified oral pronouncement.

DISPOSITION

The matter is remanded to the juvenile with instructions to specify in its disposition minute order the minor's maximum term of confinement and to orally clarify the discrepancies between the oral pronouncement of probation terms and the minute order and to modify the disposition minute order to reflect accurately the terms of the minor's probation as orally clarified by the juvenile court. In all other respects, the judgment is affirmed.

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KUMAR, J.*

We concur:

TURNER, P. J.

KRIEGLER, J.

* Judge of the Superior Court of the County of Los Angeles, appointed by the Chief Justice pursuant to article VI, section 6 of the California Constitution